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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,289	10/21/2003	Sheila Shaw	SS-101.P.1	4575
24232	7590	09/28/2005	EXAMINER	
DAVID R PRESTON & ASSOCIATES APC 12625 HIGH BLUFF DRIVE SUITE 205 SAN DIEGO, CA 92130			HAYES, MICHAEL J	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/12/05 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 6, 7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by LEONE (US Patent No. 5,141,141). Leone discloses a security band having an endless band made of elastic material and a pocket of inelastic material attached to the inner surface of the elastic band. The band is capable of accepting a peritoneal dialysis catheter because of its pocket. See figs. 1, 4, 6, 7.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over LEONE.

Leone discloses the claimed invention except for making the elastic of spandex or a width of 3-6 inches. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Leone to using spandex and a width of 3-6 because such modifications are a design choice. Applicant has not established that such material and width is for any particular purpose or solves a stated problem and it appears that other materials and widths would also work equally as well. Applicant has not established any criticality in using spandex or a width of 3-6 inches. Spandex is a well-known elastic material used to make garments.

Claims 1, 2, 3, 4, 5, 6, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUTHERLAND (US Patent No. 6,126,639) in view of LEONE. Sutherland discloses a peritoneal catheter security band made from elastic and inelastic material, having a pocket positioned along an inside surface. (figs. 1, 2) Sutherland does not disclose making the elastic band endless. Leone teaches making an endless elastic band to secure a belt around a body portion. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Leone in the band of Sutherland to secure the band around a body portion. Both references are concerned with attaching an elastic band around a portion of a body.

Allowable Subject Matter

Claims 10 and 12 are allowed.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-9, and 16 of copending Application No. 10/894135. Although the conflicting claims are not identical, they are not patentably distinct from each other because they each recite an elastic band having a pocket for holding a catheter.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (571) 272-4959. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi, can be contacted at (571) 272-4977. The fax number for submitting official papers is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mjh
23 September 2005


MICHAEL J. HAYES
PRIMARY EXAMINER